

U.S. INTERNATIONAL TRADE COMMISSION

Washington, D.C.

19 CFR Parts 206 and 207

Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion and Review of Relief Actions; and Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The United States International Trade Commission (Commission) hereby amends its Rules of Practice and Procedure (Rules) regarding antidumping and countervailing duty (AD/CVD) investigations as well as certain safeguard and market disruption proceedings. Under the amended Rules, parties are required to file prehearing briefs no later than five business days before the hearing, and they must file *in camera* requests no later than seven business days prior to the hearing. Such *in camera* requests and any comments to those requests must be served by hand-delivery or next-day service. Further, petitions filed after 12:00 noon will be deemed to be filed the following business day. The amended Rules no longer require clerical or other staff to file an administrative protective order (APO) application with the Commission; however, they must sign a form maintained by an authorized APO applicant. Finally, parties must file new APO applications in NAFTA appeals.

DATES: The effective date of these amendments is [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary, United States International Trade Commission, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2004, the Commission published a Notice of proposed rulemaking (NPR) in the Federal Register. 69 FR 64541, November 5, 2004. In the NPR, the Commission proposed certain amendments to its Rules of Practice and Procedure applicable to AD/CVD proceedings as well as parallel amendments to comparable rules regarding certain safeguard and market disruption proceedings. The Commission developed these proposed

amendments after seeking and receiving public comment on ways to improve its conduct of AD/CVD investigations (67 FR 72221, December 4, 2002).

The Commission proposed the following amendments to its Rules in the NOPR: (a) requiring parties to file prehearing briefs no later than five business days before the hearing, rather than four business days; (b) requiring parties to file *in camera* requests no later than seven business days prior to the hearing and any comments to those requests within two (2) business days after the filing of the request; (c) requiring parties to serve *in camera* requests and comments to those requests by hand-delivery or next-day service; (d) no longer requiring clerical or other staff to file an APO application with Commission but instead sign a form maintained by an authorized APO applicant; (e) stating that petitions filed after 12:00 noon will be deemed to be filed the following business day; and (f) requiring parties to file new NAFTA APO applications in NAFTA appeals. The Commission also proposed a minor amendment to change references to the Mexican Secretary of Commerce and Industrial Development to the Mexican Secretary of Economia. 69 FR 64541, November 5, 2004.

In the NOPR, the Commission invited public comment on its proposed rule amendments and requested that those comments be filed no later than 60 days after publication of the NOPR (i.e., January 4, 2005). The Commission did not receive any public comments to the NOPR. Accordingly, the Commission adopts these final amended rules without change from the proposed amendments in the NOPR.

Regulatory Analysis

The Commission has determined that these amended rules do not meet the criteria described in Section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission published a notice of proposed rulemaking, the proposed regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These amended rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et. seq.) because the amended rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The amended rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et. seq.). Moreover, they are

exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they do not contain any new information collection requirements.

List of Subjects in CFR Parts 206 and 207

Administrative practice and procedure, Investigations.

For the reasons stated in the preamble, the Commission amends 19 CFR Parts 206 and 207 as follows:

PART 206--INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

1. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251-2254, 2451-2451a, 3351-3382, sections 103, 301-302, Pub. L. 103-465, 108 Stat. 4809.

2. Amend § 206.17 by revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(iv) to read as follows:

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order

* * * * *

(b) Administrative protective order. The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

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(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking on behalf of an interested party which is a

party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

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3. Amend §206.45 by adding paragraph (e) as follows:

§ 206.45 Time for reporting.

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(e) Date of filing. Any petition under this subpart E that is filed after 12:00 noon shall be deemed to be filed on the next business day.

PART 207--INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

4. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671-1677n, 2482, 3513.

5. Amend § 207.3 by revising paragraph (b) as follows:

§ 207.3 Service, filing, and certification of documents.

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(b) Service. Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed.

Notwithstanding § 201.16 of this chapter, petitions, briefs, requests to close a portion of the hearing, comments on requests to close a portion of the hearing, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67, shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document,

except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

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6. Amend § 207.7(b) by revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(iv) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

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(b) Administrative protective order. The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

* * * * *

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by the authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision making for an interested party which is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

* * * * *

7. Amend § 207.10 by revising paragraph (a) as follows:

§ 207.10 Filing of petition with the Commission.

(a) Filing of the petition. Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition, including all exhibits, appendices, and attachments thereto, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the

date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, the petition shall be deemed filed on the next business day. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

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8. Revise § 207.23 as follows:

§ 207.23 Prehearing Brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified for filing of prehearing briefs.

9. Amend § 207.24 by revising paragraph(d) as follows:

§ 207.24 Hearing.

* * * * *

(d) Closed sessions. Upon a request filed by a party to the investigation no later than seven (7) business days prior to the date of the hearing that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission may close a portion of a hearing to persons not authorized under § 207.7 to have access to business proprietary information in order to allow such party to address business proprietary information during the course of its presentation. If any party wishes to comment on the request to close a portion of the hearing, such comments must be filed within two (2) business days after the filing of the request. In addition, during each hearing held in an investigation conducted under section 705(b) or section 735(b) of the Act, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing to persons not authorized under section 207.7 to have access to business proprietary information in order to allow Commissioners to question parties and/ or their representatives concerning matters involving business proprietary information.

10. Amend § 207.93 by revising paragraphs (b)(6), (c)(1), (c)(2)(ii), (c)(3), (c)(4)(ii)(A), (c)(5)(i), (c)(5)(ii), (c)(5)(iii), and (e); and by adding paragraph (b)(7) as follows:

§ 207.93 Protection of proprietary information during panel and committee proceedings.

* * * * *

(b) * * *

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economia, as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(7) Counsel representing, and other staff providing support to, the investigating authority, the Commission.

(c) Procedures for obtaining access to proprietary information under protective order--(1) Persons who must file an application for release under protective order. To be permitted access to proprietary information in the administrative record of a determination under panel review, all persons described in paragraphs (b) (1), (2), (4), (5), (6), or (c)(5)(i) of this section shall file an application for a protective order.

(2) * * *

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(1) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(2) The person from whom the information was obtained,

(3) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(4) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b) (1), (2), (5), or (6) of this section who has been issued a protective order, if such clerical person has signed and dated an agreement, provided to the Commission Secretary upon request, to be bound by the terms set forth in the application for a protective order of the person who retains or employs him or her (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(B) Not use any of the proprietary information released under protective order and not

otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The United States Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and

(E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as corresponding provisions of Canadian and Mexican law on disclosure undertakings concerning proprietary information.

(3) Timing of applications. An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the United States, Canadian or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretary of Economy, as the case may be, has notified the Commission Secretary that such person requires access.

(4) * * *

(ii) Applications of persons described in paragraph (b)(2) of this section—

(A) Filing. A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

* * * * *

(5) Persons who retain access to proprietary information under a protective order issued during the administrative proceedings.

(i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the

proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of NAFTA APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed NAFTA APO Form C with the United States Secretary.

(iii) Any person described in paragraph (c)(5)(i) of this section must submit a new application for a protective order at the commencement of a panel review.

(e) Retention of protective orders; service list. The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section. The Secretary shall establish a list of persons authorized to receive proprietary information in a review, including parties whose applications have been granted.

By Order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: February 16, 2005